

REMARKS

Summary Of The Office Action & Formalities

Claims 1-5 are all the claims pending in the application. By this Amendment, Applicant is amending claims 1, 3, 5, and adding new claims 6-10. No new matter is added.

Applicant thanks the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copy of the priority document was received.

Applicant is submitting herewith form PTO/SB/08 listing the references in the International Search Report that have already been considered by the Examiner. The Examiner is kindly requested to initial these references.

Claims 1-5 are rejected under 35 U.S.C. § 112, first paragraph, for the reason set forth at pages 4-5 of the Office Action. Applicant has amended the drawing to clearly identify a spray insert and profile. One skilled would need no more description to understand that the inventor possessed the corresponding subject matter recited in the claims. Moreover, “[t]he description requirement comes into play when a claim is added by an applicant for a patent at some stage after the original filing date and the claim differs in scope from the original claims.” Chisum, 7 Patents, § 7.04 (1991). *See also, e.g., In re Wright*, 9 USPQ2d 1649, 1651 (Fed. Cir. 1989); *In re Kaslow*, 217 USPQ 1089, 1096 (Fed. Cir. 1983); *In re Smith*, 178 USPQ 620, 623-24 (CCPA 1973). Since the rejection is based on the language recited in original claim 7, the rejection is unfounded.

The prior art rejections are summarized as follows:

1. Claims 1-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schneider in view of Brakarz et al.

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 103

1. Claims 1-5 Over Schneider In View Of Brakarz et al.

In rejecting claims 1-5 over Schneider in view of Brakarz et al., the grounds of rejection state:

In the embodiment of Figures 2-4, 6, and 7, Schneider discloses a pasty fluid dispenser device comprising a fluid reservoir (storage chamber) with a pump (compression chamber 38) mounted to it. A dispensing head (pushbutton member 1) is mounted to the pump (compression chamber 29) to move between a rest position and a dispensing position, and it has a dispensing orifice (116). The device comprises a closure system (tubular guide portion 110) fixed to the reservoir (storage chamber) and it comprises a closure element (masking element 113) suitable for closing off the dispensing orifice (116) from the outside when the dispensing head (pushbutton member 1) is in the rest position. The closure system (tubular guide portion 110) includes an opening cooperating with the dispensing orifice (116) when the dispensing head (pushbutton member 1) is in the dispensing position, and making it possible for fluid to be expelled through the dispensing orifice (116), as shown in Figure 2. The closure system (tubular guide portion 110) is formed in such a way as to make it possible for the dispensing head (pushbutton member 1) to be actuated manually by a user. The dispensing head (pushbutton member 1) is mounted to move axially, as shown in Figures 2 and 3, and the dispensing orifice (116) is directed radially, as shown in Figure 4. The closure system (tubular guide portion 110) is implemented in the form of a hollow sleeve disposed around the dispensing head. The hollow sleeve has, on one side, the closure element (masking element 113) disposed above the opening, and on another side, a cutout through which the dispensing head (pushbutton member 1)

projects so that it can be actuated by the user, as discussed in column 6, lines 44-65. While the dispensing head (pushbutton member 1) is returning from its dispensing position to its rest position after the dispensing member has been actuated, the closure element (masking element 113) slides snugly over the zone situated around the dispensing orifice (116), so as to remove any trace of fluid at the dispensing orifice (116), as discussed in column 5, lines 23-32. The closure system (tubular guide portion 110) is snap-fastened to the neck of the reservoir, as shown in Figures 6 and 7.

Schneider's dispenser is not a spray device. Schneider does not disclose a spray nozzle insert or that the pump has a dead stroke. Brakarz et al. discloses a spray device including a pump (cylindrical-shaped body 3 and piston 7) and a dispensing head (pressing button 9) with a spray nozzle insert (atomizer insert 10) for limiting the dead volume, as discussed in column 3, lines 41-52. The pump (cylindrical-shaped body 3 and piston 7) has an initial dead stroke, actuating the pump starting only after the dispensing head has traveled over the dead stroke, as discussed in column 3, lines 14-40. As stated in the rejection under the first paragraph of 35 USC 112 above, the meaning of the "spray profile" in this application is uncertain. Therefore, the examiner is using the only explanation found in the specification and claims, which states that the spray profile is for "ensuring that the product is sprayed when the dispensing member is actuated" to identify the "spray profile" in Brakarz et al. The spring (5) is considered the "spray profile" because it ensures that the product is sprayed when the dispensing member is actuated.

The elements of Brakarz et al. discussed above are all elements that are related to the type of dispenser it is: a sprayer. The elements of Schneider discussed above are related to any type of fluid dispenser. The closure element of Schneider does not necessarily have to be used on a paste dispenser. The closure element of Schneider only requires the dispenser it is used on to have a dispensing head with a radially directed orifice that moves axially when it is being actuated. The dispenser of Brakarz et al. has these features. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the dispenser of Schneider with the spray pump components of Brakarz et al., including a spray nozzle insert, a pump with a dead stroke, and a spray profile for ensuring that the product is sprayed

when the dispensing member is actuated, in order to precompress and spray less viscous fluids that tend to stick to the outside of the orifice.

Office Action at pages 5-7. Applicant respectfully traverses.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See Manual Of Patent Examining Procedure (“MPEP”) at Section 2143.

Furthermore, the Federal Circuit has clearly stated that the USPTO is held to a rigorous standard when trying to show that an invention would have been obvious in view of the combination of two or more references. *See, In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), *citing, e.g., In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”).

The Federal Circuit in *In re Lee* emphasized that the “need for specificity pervades this authority.” *In re Lee* at 1433 (emphasis added) (*citing In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”)).

Applicant respectfully submits that the current grounds of rejection do not satisfy the Federal Circuit’s rigorous standard for demonstrating that the claimed invention would have been obvious in view of the combination of Schneider and Brakarz et al.

First, this application concerns a fluid spray device comprising a closure system 40 fixed to a reservoir 10 and comprising a closure element 41 suitable for closing off a dispensing orifice (31) of a dispensing head (30) in a rest position. This fluid spray device comprises a dispensing member starting only after the dispensing head (30) has traveled over a dead stroke, that is to say, when the dispensing orifice (31) is situated facing the opening of passageway means (42) in said closure system (40).

Schneider discloses a distributor for pasty materials comprising a tubular guide portion (110) able to be mounted on a tubular body (28). A masking element (113) is provided that scrapes the orifice (116) of the pushbutton member (101). The invention is only used in relation to distributors for pasty materials or creams as explained throughout the specification and particularly at column 8, lines 31 to 34.

Brakarz et al. discloses a manually operable liquid atomizer micropump for spraying liquid contained in a bottle or a receptacle. Particularly, Brakarz et al. describes at column 2, lines 1 to 13 and more precisely column 3, line 53 to column 4, line 4, how liquid can be ejected through the opening of the upper port (S). Therefore, as clearly disclosed in Brakarz et al., the upper port (S) will be open as soon as the force applied on button (9) is sufficient to move valve (6) downwardly.

With the foregoing understanding of the disclosures of the two applied references, Schneider and Brakarz et al., Applicant submits that one skilled in the art would not have found it obvious to modify the device of Schneider to obtain Applicant's claimed invention. Indeed, Schneider is exclusively concerned with distributors of pasty materials or creams and can,

therefore, not be considered as a spray device. Brakarz et al., on the other hand, relates to a liquid atomizer micropump. One skilled in the art would not think to use a liquid atomizer micropump in the device of Schneider. To argue otherwise is to ignore the explicitly disclosed purpose for the structure in Schneider, which is to remove the pasty material that adheres to the distribution conduit in the vicinity of the orifice. Once one replaces the dispenser for pasty materials or creams with liquid *atomizer* micropump, the purpose for having the structure of Schneider is gone. Consequently, even if one skilled in the art were to consider the teachings of Schneider with those of Brakarz et al., the skilled artisan would not have arrived at Applicant's invention.

Second, Brakarz et al. in fact does *not* disclose a pump with an initial dead stroke as specified in claim 1. Indeed, an initial dead stroke according to the present invention ensures that fluid expulsion starts only after said dead stroke, that is when the dispensing orifice is situated facing the opening. *Consequently, the dead stroke can not be dependent on the force applied by the user on the pushbutton, but must only be dependent on the distance traveled by this pushbutton.*

Therefore, Brakarz et al. is not pertinent and its teaching can not be applied to obtain the present invention. Indeed, a sufficient force exerted on the pushbutton would provoke a liquid ejection and would not permit the dispensing orifice to be located facing the passageway means in the alleged modified structure.

Thus, Brakarz et al. does not describe an initial dead stroke as recited in claim 1.

In view of at least the foregoing differences, the Examiner is kindly requested to reconsider and withdraw the rejection of claim 1 and its dependent claims.

New Claims

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 6-10. Claim 8 is allowable because the applied art does not teach or suggest a closure system fixed to the fluid *spray* device so as to remain immobile when the dispensing head moves between the rest position and the dispensing position. The remaining new claims are allowable at least by reason of their respective dependencies.

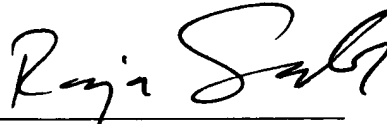
In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No. 10/031,599

Attorney Docket No.: Q68159

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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